



DISCRIMINATION OF MENTALLY ILL UNDER HINDU LAW: NEED FOR AMENDMENT TO HINDU MARRIAGE ACT, 1955

*By Manasa Rudrakshala
From CMR University, School of Legal
Studies*

ABSTRACT

In the past few years, people of the Indian society have been calling for amendments to be made to the Hindu Marriage Act regarding the provisions imposing disabilities and restrictions on the right to marry of people suffering from insanity, mental disorders, and mental illnesses.

This paper will explore why changes have been demanded to be made to the legislation. It will analyze the arguments which have been put forward as to why the HMA needs to be amended to understand the society's perspective. Additionally, this exploration will look into certain cases brought before the courts relating to mental disorders as a ground for dissolution of marriage to understand the legal perspective – how the interpreters of law understand mental disorders and divorce. This paper will state whether amendment is necessary to be made to the act, why and which specific changes are to be made.

¹ Essay on “Hindu Marriage a Sacrament” (2013). Available at: <https://www.yourarticlelibrary.com/marriage/essay-on-hindu-marriage-a-sacrament/4373> (Accessed: 29 November 2021).

KEYWORDS

- *Mental disorders*
- *Ground for dissolution of marriage*
- *Hindu Marriage Act, 1955*

INTRODUCTION

Although the nature of Hindu marriage has witnessed changes as to the sanctity of marriage, marriage between two Hindus has historically referred to a religious sacrament, a binding tie, an indissoluble bond, and a permanent union. According to RN Sharma, Hindu marriage means “a religious sacrament in which a man and a woman are bound in permanent relationship for the physical, social and spiritual purposes of dharma, procreation and sexual pleasure”.¹ This definition displays the features of Hindu marriage as being sacramental, lasting, a religious and social duty.

As traditional Hindu beliefs reflect that marriage is a union which is unbreakable and cannot be dissolved at will, the concept of divorce was not permitted, largely unknown, and cases of divorce were rarely found. Permissibility of divorce among Hindus grew gradually in modern India and divorce was legally recognized in the 1950s. Hindu law permitted divorce among Hindus with the Hindu Marriage Act, 1955. Provisions 11 through 18 of the HMA relate to “Nullity of Marriage and Divorce”, which includes sections as to permissibility and legality of divorce, grounds for divorce and proceedings of divorce in courts.



The Hindu Marriage Act has outlined various grounds on which a spouse may seek for dissolution of marriage through divorce. This paper will be focusing on one particular ground for divorce provided by the act – the ground of insanity and mental disorders which has been mentioned in the following provisions –

- **Section 5(ii)** states that in order for a Hindu marriage to be valid, neither party should be incapable of giving consent to the marriage as a result of unsoundness of mind, or should have been suffering from a mental disorder which makes them unfit for marriage, or should be subject to recurrent attacks of insanity².
- **Section 12(1)(b)** states that any marriage which is “in contravention of the condition specified in clause (ii) of section 5” is a voidable marriage³.
- **Section 13(1A)(i)** allows for an individual to seek divorce on the ground that their spouse “has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent”⁴.

As times have changed and mental disorders are viewed differently in the Indian society – legally, medically and socially – amendments to the Hindu Marriage Act regarding provisions of insanity and mental disorders being a ground for divorce has been widely called for.

RESEARCH PROBLEM

This paper aims to explore the arguments behind which Hindus call for an amendment to the provisions stating insanity and disorders to be grounds for dissolution of marriage. By analyzing such reasons as to why the community has been fighting for alterations to the act, this study aims to conclude whether such amendments are necessary to be made for the act to be consistent with the norms, values as well as newfound medical knowledge regarding mental disorders of current day India. Additionally, in order to understand how the law currently looks at mental disorders and applies such provisions, this paper will explore several case laws pertaining to the topic.

RESEARCH QUESTIONS

1. Why have amendments been called to be made to the Hindu Marriage Act, 1955 with relation to provisions allowing insanity or mental disorders of a spouse to be a ground for dissolution of marriage?
2. Is it necessary for amendments to be made to the Hindu Marriage Act, 1955 regarding provisions stating insanity or mental disorders as a ground for dissolution of marriage as such provisions are inconsistent with the perspectives of society regarding such topics?
3. How do courts interpret the provisions declaring mental illnesses as ground for dissolution of marriage?

² The Hindu Marriage Act, 1955

³ The Hindu Marriage Act, 1955

⁴ The Hindu Marriage Act, 1955



RESEARCH OBJECTIVES

1. To provide understanding and analysis regarding arguments and reasons as to why amendments have been recommended to be made to the Hindu Marriage Act regarding insanity and mental disorders being a ground for divorce.
2. To explore whether changes need to be made to the Hindu Marriage Act regarding such provisions in light of changing perspectives and medical knowledge regarding unsound mind and mental disorders.
3. To analyze how the courts interpret provisions relating to mental disorders and marriage to understand how the law perceives mental illness in the present day.

LITERATURE REVIEW

- *Narayan, C. et al. (2015) "Indian marriage laws and mental disorders: Is it necessary to amend the legal provisions?", Indian Journal of Psychiatry, 57(4), p. 341.*

This publication put forward by psychiatric and psychology students has been valuable in this paper as has provided an in-depth exploration between marriage, mental disorders and the Hindu Marriage Act as well as reasons as to why amendment is necessary.

- *Sehgal, D., 2021. "Analysis of the ground of insanity under Hindu Marriage Act, 1955". iPleaders.*

This article provides for an analytical understanding on insanity as a ground for

dissolution of marriage under the HMA and why amendments need to be made to the legislation. This source additionally provided information on legal cases related to the topic.

- *Sharma, I., Reddy, K. and Kamath, R. (2015) "Marriage, mental illness and law", Indian Journal of Psychiatry, 57(6), p. 339.*

This paper published by students and doctors on the relationship between marriage, mental illness and law in India has provided for an understanding of why changes need to be made to the law and how some courts have already worked towards changing the relationship between mental illness and law in India.

UNSOUNDNESS OF MIND AND MENTAL DISORDERS UNDER THE HINDU MARRIAGE ACT

As mentioned above, unsoundness of mind and mental disorders are covered by the HMA under sections 5(ii), 12(1)(b) and 13(1A)(i). Sections 5(ii) and 12(1)(b) state that both parties must be of sound mind in order to constitute a valid marriage and if either of the parties are of unsound mind or suffer from mental disorders, the marriage is considered voidable and can be avoided by the other party.

For Section 13(1A)(i) which states that if a party to the marriage is incurably of unsound mind or has been suffering from mental disorder in a way which makes it so that the other spouse cannot be expected to live with them, the spouse may seek divorce on such a ground. The act further provides an explanation stating that "mental disorder" refers to "mental illness, arrested or



incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;”⁵. Additionally it explains that “psychopathic disorder” used in such explanation refers to “a persistent disorder or disability of mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, whether or not it requires or is susceptible to medical treatment”⁶.

CALL FOR AMENDMENT TO HINDU MARRIAGE ACT

The Hindu community, for the past few years, has been recommending that changes be made to the provisions of the Hindu Marriage Act regarding insanity and mental disorders as ground for nullification or dissolution of marriage. This section will explore the reasons and arguments as to why amendments are being called to be made to the HMA with regards to such sections.

STIGMATIZATION OF MENTAL DISORDERS

In the Indian society, stigma towards mental illnesses and disorders is commonly found. People with mental disorders often find themselves subject to societal disapproval, and negative or discriminatory attitudes of others. While India has been working towards gradually decreasing the stigma towards mental disorders over the years, the HMA has challenged those efforts by promoting the stigmatization of mental illnesses.

The Act states that consent is required to be given by both parties in order for a marriage to be valid. Section 5(ii) states that valid consent cannot be given by people of unsound mind, who have been suffering from mental disorders or recurrent attacks of insanity. It has been argued that the mentioning of singling out of mental disabilities in this provision is unnecessary and furthers stigma and discrimination towards mental disorders, as the provision could have simply imposed restrictions on those who are incapable to give valid consent due to any reason. There are many disabilities which render a person incapable to give consent to marry, but such disabilities are not mentioned in the Act.

The mere including of mental disorders as a ground for dissolution of marriage poses a threat to the destigmatization of mental illnesses in Indian society. By allowing partners to dissolve their marriage on the basis of their spouse’s mental disorders, it creates negative attitudes towards people with mental illnesses, making it seem as though they are not deserving of getting married or remaining married.

OUTDATED & STEREOTYPICAL BELIEFS

It has been said that making insanity as a ground for dissolution of marriage is “based on age-old beliefs and is a product of a patriarchal mindset”⁷. It is understandable that in 1955, societal norms included stigmatizing of mental disorders and illnesses, resulting in discriminatory practices towards the mentally ill. But, just because society was such a way when the Act was enacted is no excuse for the legislation to remain unchanged and continue

⁵ The Hindu Marriage Act, 1955

⁶ The Hindu Marriage Act, 1955

⁷ Sehgal, D., 2021. Analysis of the ground of insanity under Hindu Marriage Act, 1955. *iPleaders*, [online] Available at: <https://blog.ipleaders.in/analysis-ground-insanity-hindu-marriage-act-1955/#The_calling_for_amendments_in_the_Hindu_Marriage_Act_1955_in_relation_to_the_ground_of_insanity> [Accessed 29 November 2021].



discrimination towards the mentally ill in present day Indian society. Time has passed and perceptions as well as medical knowledge regarding mental health is ever changing in the Indian society. Law is said to be dynamic, and should evolve according to the changing society.

VAGUE PROVISIONS

The provisions relating to mental disorders and marriage have been found to be vague, ambiguous, and difficult to interpret.

Firstly, Section 13(1)(iii) states that “mental disorders of such a kind or to such an extent as to be unfit for marriage and the procreation of children”. The terminology used is vague, difficult to understand and difficult to base a conclusion upon. As the provision simply states that the petitioner may file for divorce if their spouse is suffering from a mental disorder which makes them unfit for marriage and the procreation of children, more explanation has been suggested to be added to describe which kind of mental disorders result in such positions.

Secondly, the provisions have been found to be unclear and indefinite as the terms used such as “unsoundness of mind”, “mental disorder”, “insanity” have not been defined or properly explained in the act, which results in ambiguity and confusion regarding the terms.

Thirdly, the Act merely mentions mental disorders when speaking about consent and ground for dissolution of marriage, but does not provide any further information as to which mental disorders or degrees of disability with respect to certain mental disorders. Mental disorders are not uniform – they come in different forms and even the same disorder exist differently in different people.

DISCRIMINATION AGAINST MENTAL DISORDERS

The relevant provisions are discriminatory, derogatory and impose a disability on the mentally ill in terms of their right to marry. By not amending such provisions, discrimination towards the community is continues to exist and social exclusion of the mentally ill is basically legally permitted.

The first way in which the HMA discriminates against mental disorders is when it mentions mental disorders in Section 5(ii) declaring consent as a requirement for a valid marriage. The provision states that a person suffering from mental disorders is not in a position to consent to a marriage. While this may be true in some cases, there are many other illnesses which could cause a person to be incapable of giving consent. Despite this, the Act makes no mention as to other such illnesses and only highlights mental illnesses. Additionally, mental disorders are not uniform in nature and affect different people differently. Hence, not all people with mental disorders are incapable of consenting to marriage.

Secondly, the Act states that those suffering from mental disorders are “unfit for marriage and the procreation of children” as per Section 5(ii)(b). Similar to the above point, a number of illnesses and disorders can render a person unfit for marriage and the procreation of children including reproductive disorders, but none of such disorders were named besides mental disabilities.

Thirdly, the HMA discriminates against mental disorders by including mental disorders in the very short list of illnesses which are grounds for dissolution of



marriage. Along with mental disorders, the list includes leprosy and venereal disease. Undoubtedly, there are numerous other disorders, diseases and illnesses which could lead to a person wanting to seek divorce from their spouse.

Fourthly, the Act, under Section 13(1)(iii) states that if a spouse has been suffering from a mental disorder “of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent”. While this may be true in some cases where an individual’s spouse is dealing with a mental disorder of such nature where they cannot lead a normal life or put others at risk, mental disorders are not the only illnesses which result in such conditions. There are a myriad of other reasons as to which a person “cannot reasonably be expected to live with the respondent”, may it be a result of some illness, disorder, or disease, but to solely mention mental disorders is unnecessary.

There are many other illnesses, including physical illnesses which could render a person incapable of giving consent, unfit for marriage and the procreation of children, cause for dissolution of marriage and put their partner in a position where they could no longer be expected to live with them. Such disabilities are not included in the Act.

ADVANCEMENT IN PYSCHIATRY

In 1955, mental disorders were viewed with a negative perspective socially as well as

⁸ Sharma, I., Reddy, K. and Kamath, R. (2015) "Marriage, mental illness and law", Indian Journal of Psychiatry, 57(6), p. 339. doi: 10.4103/0019-5545.161502.

medically, as most were thought to be incurable.

Presently, with advancements and growth of knowledge in the psychiatric field and in relation to mental disorders and illnesses – most mental disorders can be cured, and most people suffering from mental disorders are able to be treated to such an extent where they can lead a normal life just as a person with no mental disabilities. As mental disorders are no longer considered incurable or untreatable in present day society and medical field, it is unnecessary to include medical disorders as a restriction on an individual’s right to marry.

An example of a disability mentioned in this Act which is now curable is mood disorders. When it comes to recurrent attacks of insanity, mentioned under Section 5(ii)(c), mood disorders are one of the most common mental disorders of reoccurring nature, which are experienced differently by different people and range from sadness to psychotic episodes. Such disorders are basically curable in this day and age⁸.

Another example is schizophrenia. While schizophrenia is perceived as a mental illness which renders individuals dangerous to be around, people suffering with such can be cured or manage their disorder through psychiatric treatment and are now able to live a normal life⁹.

PERSONS WITH MENTAL DISORDERS HAVE RIGHT TO MARRY

The right to marry is a basic human right and is included in an individual’s fundamental

⁹ Narayan, C. et al. (2015) "Indian marriage laws and mental disorders: Is it necessary to amend the legal provisions?", Indian Journal of Psychiatry, 57(4), p. 341. doi: 10.4103/0019-5545.171836.



right to live a life of dignity. Persons with disabilities, including mental disabilities have the same rights as those without disabilities, including the right to marry. The Hindu Marriage Act places disabilities and restrictions on individuals suffering with mental disorders and illnesses in terms of their right to marry and remain married. Such restrictions amount to depriving persons with disabilities of their right to marry and violation of their basic human right.

In addition to placing unreasonable restrictions on their basic rights, by imposing such such disabilities and restrictions on people suffering from mental disorders, the Act further encourages the stigma against them, painting them as people who are unfit to be in marital relationships or lead a conventional, normal life.

UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2006

The UNCRPD is an international human rights treaty which was created “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity”¹⁰. Disabilities include physical disabilities as well as mental disabilities, which include mental disorders, illnesses, and insanity. This treaty has been signed and ratified by India, and by depriving and creating restrictions on the right to marry

of those with mental disabilities – India is going against the convention.

CASE LAWS

Various cases have been brought before the courts regarding mental illness and disorders as a ground for dissolution of marriage. This section will look at how the courts interpret the relevant provisions.

KOLLAM CHANDRA SEKCHAR V. KOLLAM PADMA LATHA, 2013¹¹

This case is considered to be a landmark judgement as it has brought significant changes to the interpretation of the Hindu Marriage Act. The petitioner filed for divorce from his wife on the ground of mental illness, specifically, schizophrenia. The court looked into whether the wife’s mental illness can be a reason for the husband “to abandon her and seek dissolution of marriage after a child is born out of their marriage”. The court stated that there was no concrete evidence proving that the wife had been suffering from schizophrenia, and even if she had been suffering, the court stated that, “Schizophrenia is a treatable, manageable disease.”. The court set aside the husband’s appeal for dissolution of marriage and instead granted a decree allowing the wife to file a petition for restitution of conjugal rights¹².

This judgement shows how the courts disagree with the provisions of the HMA which make mental disorders a ground for divorce. The judges put forward that just

¹⁰ Narayan, C. et al. (2015) “Indian marriage laws and mental disorders: Is it necessary to amend the legal provisions?”, Indian Journal of Psychiatry, 57(4), p. 341. doi: 10.4103/0019-5545.171836.

¹¹ Kollam Chandra Sekhar v. Kollam Padma Latha 2013, AIR 1986 P&H 379

¹² Man can’t dump wife on grounds of schizophrenia, rules Supreme Court (2021). Available at: <https://www.thehindu.com/news/national/man-cant-dump-wife-on-grounds-of-schizophrenia-rules-supreme-court/article5146611.ece> (Accessed: 29 November 2021).



because a spouse is suffering from a sickness, it does not give the other a reason to leave them. This shows that while the courts views regarding mental disorders are evolving with the society and working towards destigmatizing mental illnesses and protecting rights of the mentally disabled, the legislation is lagging behind in such aspects.

NARAYAN RL V. SANTHI, 2001¹³

In this case, the Supreme Court held that in order to declare a wife as “unfit for marriage and procreation of children” as a result of a mental disorder, it needs to be established that the illness suffered by her is of such a kind of to such an extent that it makes it impossible for her to lead a normal life¹⁴.

This case provided a precedent in that in order for an individual to divorce their spouse on the ground that they are no longer fit for marriage or the procreation of children, they will have to prove that the mental disorder is of such nature that it no longer allows their spouse to lead a conventional life. This judgement provides an explanation to the vague and ambiguous provisions of the HMA while also declaring that not all mental disorders render an individual as unfit for marriage and procreation, but only a select few.

REDDY H. V. REDDY R., 2003¹⁵

This case provided some differentiation between different mental disorders by stating

that depression by itself cannot be considered as a ground for divorce under the Hindu Marriage Act¹⁶. This reinforces the idea that since not all mental disorders are the same, the legislation needs to make changes to specify which disorders are grounds for divorce.

ANALYSIS

Amendments should be made to the legislation in order to reduce the stigma revolving around mental disorders, to discourage social exclusion and promote integration of mentally ill into society and for the legislation to be consistent with the views and values of society as well as medical knowledge pertaining to mental disorders.

While many call for removal of all provisions referring to mental disorders as grounds for nullification or dissolution of marriage, it is important to keep certain provisions which declare mental disorders as a ground for dissolution of marriage in the legislation to ensure the right to life and liberty. The right to life and liberty includes living a life with dignity as well as living in a safe environment, and in some cases, mental disorders are of such a form where they can deprive their spouse of such rights by subjecting them to violence, making them a permanent caretaker or simply making them lead an unhappy lifestyle. The following changes are called to be made to the legislation.

¹³ Narayan RL v. Santhi 2001, 4 SCC 688

¹⁴ Lakshmi Narayan vs. Santhi. Available at: <https://www.daaman.org/jd/R-Lakshmi-Narayan-vs-Santhi/The-Supreme-Court-held-that-to-brand-a-wife-as-unfit-for-marriage-and-procreation-of-children-on-account-of-a-mental-disorder-it-needs-to-be-established-that-the-ailment-suffered-by-her-is-of-such-a-kind-or-to-such-an-extent-that-it-is-impossible-for-her-to-lead-a-normal-married-life>

¹⁵ Reddy H v. Reddy R. 2003, HLR 132 AP

¹⁶ Sharma, I., Reddy, K. and Kamath, R. (2015) "Marriage, mental illness and law", Indian Journal of Psychiatry, 57(6), p. 339. doi: 10.4103/0019-5545.161502.



SUGGESTIONS

1. A section to be added to the legislation specifying which mental disorders and which degrees of such mental disorders constitute as a valid ground for divorce. This will provide clarity as to which mental disorders of spouses put their parents in dangerous or unsatisfactory positions.
2. The provisions regarding unsoundness of mind, mental disorders and recurrent attacks of insanity mentioned in the legislation with respect to consent to marriage be removed (Section 5(ii)) as it unnecessarily discriminates and stigmatizes mental illnesses when there are a number of reasons as to why a person could be incapable of consenting to marriage or be unfit for marriage and procreation of children. With the removal of this provision comes the removal of Section 12(b).

CONCLUSION

Mental disorders as a ground for dissolution of marriage has led to a call for changes to be made to the Hindu Marriage Act in the recent years, just as mental health has started to gain importance and stigma regarding mental illnesses has reduced. The HMA makes unnecessary mentions of mental disorders, provides vague provisions as to their disabilities and essentially deprives their human and fundamental right to marry. In light of this, changes and amendments have been recommended to be made to the legislation to ensure equality in society and before the law as well as to ensure that the law is changing to be consistent with the societal values and norms.

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